IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1516 OF 1981

The Malwa Vanspati and Chemicals Co.Ltd ......Plffs.
vs.
The State Trading Corpn. of India Ltd ......Defnds.

U.J. Makhija with D.V. Singh i/b. M/s. Thakordas and Madgaonkar for the plffs.

K.H. Modi i/b. Little and Co. for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 3RD AUGUST, 2005.

JUDGMENT :

1. The present suit has been filed by the plaintiff for the recovery of sum of Rs.10,77,280.29/- alongwith interest at the rate of 18% p.a on the principal amount of

Rs.7,44,344.27/-.

2. Some of the material facts in the background of which the present suit is filed is briefly set out as hereunder :

3. The defendant is a canalising agency of the government of India and under the various import export policies promulgated commenced from time to time by the government the defendant is entitled to import exclusively various oils as a canalising agency and distribute the same to the various consumers in India. The plaintiffs are the manufacturers of hydrogenated and refined oil extractions and soaps etc. and are carrying on business at Indore in the state of Madhya Pradesh. The defendants after import of certain oils offered the same to various mills as per the quotas allocated to them. Similarly the plaintiff mills were also allocated certain quotas for the imported oils. Under the said allocation the plaintiff was entitled to the delivery of the various oils imported by the defendant against issue of the

delivery order. The practice of the plaintiff has been to issue delivery orders on receipt of the full payment in respect thereof. After receiving the said delivery order, the plaintiff was required to take delivery of the said oil either from Bombay or Calcutta or Kandla as the case may be. Inrespect of the aforesaid deliveries there has been a mutual and current running account between the plaintiff and the defendant. It is the case of the plaintiff that between the parties an arrangement was that in an event if there is any short delivery then the defendant would give either delivery of the said goods or refund excess payments made by the plaintiff then the goods actually delivered by the defendant.

4. It is the case of the plaintiff that between 9.11.1976 to 14.12.1978 the defendant issued various delivery orders from time to time for delivery of Palm Oil, Rapeseed Oil, and Soyabean Oil, to the value of Rs.12,88,494.61/-. It is further the case of the plaintiff that inrespect of the said goods which are delivered by the defendant

from time to time during the aforesaid period there has been on some occasion short delivery of the goods and thus there was deficit in the quantity of the oil received by the plaintiff from the defendants then what was actually allocated and for which the entire price was paid in advance by the plaintiff to the defendants.

5. On 6.3.1979 a letter was addressed by the plaintiff to the defendants inter-alia recording therein that there has been short delivery of the goods to the extent of 224.103 metric tones inrespect of the aforesaid delivery. The plaintiff also submitted a statement giving details of the various deliveries which they actually ordered and for which the payment has been made. It is the case of the plaintiff that there was a short delivery during the said period and thus the plaintiffs are entitled to the refund of the balance amount for the quantities not supplied. It is further case of the plaintiff that on 9.4.1979 the defendant addressed a letter inter-alia stating therein that the statement of account of the

plaintiff in their books of account has been finalised and the same is forwarded to their account department for verification and confirmation of the quantity delivered and amount paid. On 7.5.1979 the defendants once again addressed a letter to the plaintiff inter-alia pointing out that they should be paid the excess amount which was recovered from them by the defendants. On 23.6.1979 the defendants addressed a letter to the plaintiff stating that they have scrutinised the account and they confirmed the quantity shown as delivery except certain items as mentioned in the said letter. Thereafter the plaintiffs sent further reminders on 3.9.1979 and 15.9.1979 to the defendants to pay the excess amount. In response thereof the defendants have forwarded a letter dated 19-20.12.1979 alongwith a cheque for sum of Rs.4,82,522.90/- to the plaintiff and contended that, that is the amount due and payable by the defendant to the plaintiff as per their books of accounts. However it was the case of the plaintiff that much larger amount was due and payable by the defendant and even after

adjusting the amount paid by the defendant being sum of Rs.4,82,522.90/- the plaintiff is still entitled to receive from the defendant a sum of Rs.7,44,344.286/- as due and payable. Accordingly a letter was addressed to the defendants by the plaintiffs advocate on 27.2.1981 and called upon the defendant to make payment of the aforesaid amount of Rs.7,44,344.287/- alongwith interest at the rate of 18% p.a. within two weeks from the receipt of the said letter. Inspite of the notice of the advocates the defendants neither made the payment nor forwarded any reply and in view thereof the plaintiff filed the present suit for the recovery of the aforesaid amount. The defendant has resisted the present claim by filing written statement. It has been interalia alleged by the defendant that after full reconciliation of the Statement of account by the defendant in their books of accounts infact it is the case of the plaintiffs who are liable to pay to the defendant a sum of Rs.14,485.17/-. Thus it is contended that there is no question of any decre being passed against the defendant. It has been contended in

the written statement that there has been various supplies by the defendants to the plaintiffs which was in excess and the said excess delivery of the oil is not taken into consideration by the plaintiff while raising the aforesaid claim. It is the case of the defendant that they are entitled to additional payment from the plaintiffs against the excess supplies of the oil as well as also entitled to certain payments for not lifting the delivery of the goods in time. In view thereof the defendants submitted that there is no amount due and payable by the defendants to the plaintiffs and on the contrary the plaintiffs must pay the said sum of Rs.14,485.17/-.

6. On the aforesaid pleadings between the parties the issue were framed by this court on 22.6.2001 which reads as under :

1. Whether the plaintiffs prove that an amount of Rs.10,77,280.29/- is due and payable by the defendants ?

2. Whether the plaintiffs prove that they are entitled to interest on Rs.7,44,344.27/-

at the rate of 18% p.a. from the date of the suit till payment ?

3. Whether the plaintiffs are entitled to costs of the suit ?

4. Whether the suit should be dismissed with cost for want of any cause of action as alleged in para 1 and 13 of the written statement ?

5. What order/decree ?

7. On trial the plaintiffs have led the oral evidence of one of the witness namely Tarun Matadeen Purohit. The defendant has also led evidence of one witness of one Mr. M.K. Venugopal. The plaintiffs have filed affidavit of documents being Ex.P.2 to P.14 which inter-alia contains the statement of accounts, correspondence the invoices and advocates notice. In the evidence the plaintiff has deposed that there been a delivery of the goods from time to time and in respect of which the plaintiff is entitled to the recoveries of certain amounts. It has been deposed that after adjustment of the aforesaid payment of

Rs.4,82,522.90/- the plaintiff is entitled to the balance claim of Rs.7,44,344.27/- as due and payable by the defendant to the plaintiff and interest thereon. The plaintiff is cross examined by the learned counsel for the defendant. In the course of his cross-examination the plaintiffs witness has infact confirmed the aforesaid amount as due and payable and inrespect of the cross examination pertaining to the document particularly Exh.p.12 which is statement of account. The witness has stated as under :

> "It is true that as on 4.4.81 the balance of the entries were yet not reconciled in the accounts of the plaintiffs and the defendants. We have reconciled our own statement of accounts. We have given credit to the plaintiff in our books of accounts at the time of reconciliation of Rs.744,344.27/- which is a suit claim."
>
> "It is true that the amount of Rs.7,44,344.27 was due and payable to the plaintiffs before carrying out the reconciliation. We have not paid the aforesaid amount because we were entitled to recover certain amounts from the plaintiffs."

8. However in the course of his evidence he has also admitted that in so far as one particular entry at serial no. 18 in the statement of account Ex.P.12 is concerned there has been an excess delivery and for which he has in place of giving credit to the defendant he has wrongly debited the said account of the plaintiff herein. In so far as the evidence of the defendants is concerned it is very significant to note that the defendants have produced no documentary evidence of any nature whatsoever. The so called reconciliation made by the defendant and at the foot of which the defendants are claiming to the sum of Rs.14,485.17 Even the said reconciliation statement has also not been produced by the defendant. The defendant has also not produced any books of accounts to show that infact nothing is due and payable by the defendants to the plaintiffs. The defendants have failed to discharge the burden to prove that that there was any excess delivery of the goods because inrespect of none of the transactions the defendants have produced any evidence to show an

excess delivery of the goods. No details are furnished for such excess delivery or of the amount recoverable by the defendants from the plaintiffs on that account. However from the evidence of M.K. Venugopal in para-5 thereof he has admitted that at one point of time there was an amount of Rs.8,08,824.29/- was payable. However he has stated in his evidence in the said para-5 that it is true that the amount of Rs.8,03,824.29/- was payable. He says that the same is credited against the claim of the defendant for excess delivery and other lifting charges etc. and therefore the amount payable is only Rs,14,485.60/-. Thus in view of the fact that the defendant has not produced any material to show that there was any excess lifting or carrying charges then in that event by virtue of para-5 of the evidence the said claim of Rs.7,44,344.22/- stands admitted. Apart therefrom in the cross examination of the said witness of the defendant it has been admitted by him that he has nothing to show that there was an infact excess delivery of the goods or the amount is recoverable by the defendants towards so called

carrying charges etc. In so far as the evidence on this aspect is concerned in cross examination he has stated as under :

> It is true that as on 4.4.81 the balance of the entries were yet not reconciled in the accounts of the plaintiffs and the defendants. We have reconciled our own statement of accounts. We have given credit to the plaintiff in our books of accounts at the time of reconciliation of Rs.7,44,344.27 which is a suit claim. It is true that the amount of Rs.7,44,344.27/- was due and payable to the plaintiffs before carrying out the reconciliation. We have not paid the aforesaid amount because we were entitled to recover certain amounts from the plaintiffs."

9. The larned counsel for the defendant has though sought to argue that he is entitled to the set off and or adjustment of the excess delivery of the goods and which has not been paid and the same has been adjusted by the defendant and thus nothing has been due and payable. However he has fairly conceeded that he has neither produced any books of accounts nor produced any document to show that there was either excess delivery inrespect of the

transactions or he is entitled to any claim of set off or adjustment of the sum of Rs.7,44,344.27/-. However he has contended before me that Exh. P.12 which has been produced by the plaintiff pertains to only short delivery of goods and that deliberately the excess delivery has not been included. It is therefore contended that Ex.P.12 ought not to be taken into consideration. However he has also pointed out that inrespect of item no.18 there is excess quantity shown in the said list. Further in the place of giving credit to the said excess delivery the plaintiff has debited the said amount. He has also drawn my attention to Ex.P.8 which is a letter from the defendant and it has been mentioned therein that if the plaintiff sends their statement of account then they would reconcile the same with their account and settle the said matter. However according to the defendants they did not sent any statement of account for reconciliation and therefore the defendants have reconciled their own books of accounts. However I am unable to accept the aforesaid contention because the defendants have

produced no evidence whatsoever of any nature in the form of documents to show that the statement has been reconciled or there has been excess delivery charges payable by the plaintiffs to the defendants. On the contrary from the evidence produced it has been established that at foot of the account there has been a due and payable by the defendants to the plaintiffs a sum of Rs.7,44,344.27/-. If the defendant is claiming adjustment against the said claim then it is for the defendants to show that they are entitled to set off the same as against the excess delivery. However the defendants have failed to do so.

10. On the other hand it is contended by the plaintiffs that I must ignore the entry at serial no.18 which has been found in the statement of account of the plaintiffs themselves at Ex.P.12. The said admitted entry on Ex.P.12 indicates that there has been an excess delivery inrespect of one quantity. The coloumn-5 of the said Ex.P.12 in so far as Item no.18 is concerned indicates that the ordered quantity was of 32.200 metric tones as

against which the column no.8 which indicates the actual delivered quantity was for 35.92 metric tones thus there has been an excess delivery of 3.725 metric tones. In place of giving credit of 3.725 metric tones the defendant has debited the account by Rs.14,888.68/- on the ground that there has been short delivery of 2.480 metric tones. It has been admitted that if this amount of Rs.14,888.68/- is reversed and the credit is given of 3.725 metric tones then there will be a credit required to be given of Rs.44,626/-. Thus while I hold that the defendant is liable to make payment to the plaintiffs of Rs.744,344.27/- I grant deduction to the defendants of sum of Rs.44,626/- which amount is recoverable by the defendants from the plaintiff towards the excess quantity of the goods lifted as far the entry at serial no.18 of the said statement is concerned. The aforesaid amount of Rs.44,626/- is payable towards the said 3.725 metric tones. Learned counsel for the defendants have miserably failed to prove excess delivery except the one strifle instance mentioned herein above the defendants have neither produced

invoices nor produced any delivery orders to show that there been excess delivery of the goods for which they are entitled to any price. On the other hand the learned counsel for the plaintiff has contended that the fact that there was a short delivery is mentioned in the statement of account the figure in the statement of account including the amount outstanding of Rs.744,344.27/- has already been admitted by the defendant in their evidence before the court. In view thereof the plaintiffs have established and proved short delivery of the goods. This leads me to the last contention namely the liability to pay interest in the present suit which has been claimed by the plaintiff at the rate of 18% p.a. on the balance amount due and payable of Rs.744,344.27/-. Learned counsel for the plaintiff has fairly stated that the interest from the date of the suit till payment is always in the discretion of the court. He however submitted that at the relevant time the interest prevailing in the market was at the rate of 18% and therefore this court should grant interest at the said rate. On the other hand the

defendants have submitted that the court has to take note of the fact that the rate of the interest is falling day by day and therefore interest rate should be reduced. I am of the opinion that considering the fact that the defendant is a public sector enterprise and considering the fact that the interest rate has been falling consistently. I grant interest in favour of the plaintiff at the rate of 12% I accordingly pass the following decree.

There shall be decree in favour of the plaintiff and against the defendants for the sum of Rs.10,77,280.29/- less Rs.44,626/- being Rs.10,33,654.29/- with further interest at the rate of 12% p.a on the principal amount of Rs.7,44,344.27/- from the date of the suit till payment and or realisation. There shall be no order as to costs.

sd/-

:18:

****